Google's search business targeted in looming US antitrust case

September 25 2020, by David McLaughlin and Gerrit De Vynck, Bloomberg News

Credit: CC0 Public Domain

Google's search engine, one of the most-profitable businesses in history, is about to face its biggest challenge as the U.S. government readies an

antitrust lawsuit accusing the company of crushing competition to protect and extend its monopoly.

After a 14-month investigation, the Justice Department is homing in on whether Google skews search results to favor its own products and whether it uses an iron fist over access to users to shut out rivals, according to people familiar with the matter.

Google, which controls about 90% of the online search market in the U.S., has long been a target of rivals that complain it's used that power to snuff out competition across the internet. What started out as a college research project in the late 1990s now generates about $100 billion in highly-profitable revenue each year. The search engine decides the fates of thousands of businesses online and has funded Google's expansion into email, online video, smartphone software, maps, cloud computing, autonomous vehicles and other forms of digital ads.

European competition regulators have fined Google billions of euros for breaking antitrust laws. But U.S. enforcers have left the company mostly untouched since the Federal Trade Commission closed a probe in early 2013 with no action. Now, Attorney General William Barr is on the cusp of what could be the biggest U.S. monopoly case since Microsoft Corp. was sued by the government more than two decades ago.

Barr has been a key ally in Donald Trump's crackdown on technology giants. The U.S. president has railed against internet companies for allegedly censoring conservative viewpoints online.

While some involved in the Google case expected it to be filed as soon as next week, that timing will likely be pushed back, possibly to the following week, according to two people familiar with the matter. State attorneys general and Justice Department lawyers have been discussing final preparations for the case this week in Washington. The people

asked not to be identified discussing private matters.

Senior Justice Department officials met with Google representatives this week to discuss two prongs of the investigation: search bias and search distribution, according to one of the people. Search bias is the allegation that Google skews results to favor its own properties, such as a shopping service, travel bookings and local business listings.

Search distribution centers on agreements with device makers and other partners to provide Google search as a default to users. In 2018, Goldman Sachs estimated Google paid Apple Inc. $9 billion to get its search engine on Apple's Safari web browser and other prime spots on Apple devices.

It's impossible for small search engine competitors to compete with Google's deep pockets and outbid it for valuable placements like Apple's browser, according to Gabriel Weinberg, chief executive officer of DuckDuckGo, a privacy-focused search provider that has complained to the DOJ about Google.

During a recent congressional hearing, Google executive Don Harrison argued that the company doesn't dominate the markets it operates in. Google may lead when it comes to general searches, but for product queries and other commercial searches consumers are more likely to start on Amazon.com Inc., he noted.

The Justice Department and states also are investigating Google's conduct in the advertising-technology market, where Google owns many of the systems that deliver display ads across the web. Some Democratic attorneys general briefed on the case want the Justice Department to include ad-tech in the lawsuit and may file their own complaint after the November election, one of the people said. The Justice Department declined to comment.

Competitors have complained that Google funnels excess search marketing dollars to its display ad network. That extra money can account for large portions of digital publisher revenue, making them less likely to drop Google for a rival ad-tech provider.

U.S. investigators have asked detailed questions about how to limit Google's power in the search market, according to DuckDuckGo. In Europe, regulators have forced Google to give consumers a choice over which search engine they use on Android phones.

"We're pleased it seems like the DOJ—unlike any other government in the world—is going to finally address the elephant in the room: Google's obvious, overwhelming, and anti-competitive dominance in search," a spokesman for DuckDuckGo said. "Consumers would benefit from a world without search defaults, where they could easily choose their preferred search engine."

Google has engaged in an array of practices aimed at maintaining its control over the search market and preventing competitors from gaining scale, said Gene Kimmelman, a senior advisor at Public Knowledge, which urged the Justice Department this summer to investigate Google's conduct around search. Consumers have lost out as a result because rivals are effectively shut out from competing to build better search offerings, he said.

"Search is the fundamental motivator for the pattern of behavior by Google, and all of it appears designed to maintain a monopoly," Kimmelman said.

A research paper published in June by the Omidyar Network, an organization that advocates for more aggressive antitrust enforcement against tech giants, outlined several scenarios where Google may have violated antitrust laws. The exclusive deal with Apple has helped solidify

its monopoly by preventing competitors from reaching consumers, the paper argued.

Google created a similar effect with its Android mobile operating system and agreements that effectively forced handset makers to pre-install Google's search engine and browser on their phones. Those restrictions made Google the default search service and further prevented rivals from gaining market share, according to the Omidyar paper. The EU also fined Google over this.

"This is a classic tale of a likely monopolization strategy premised on denying scale to rivals," the paper said.

The allegations echo those made against Microsoft in 1998 when the Justice Department and a group of states sued the software maker for antitrust violations. Back then, Microsoft forced computer manufacturers to bundle its Windows operating system with its Internet Explorer browser, making it harder for rivals such as Netscape to compete. Even though other browsers didn't pose a direct threat to Microsoft's monopoly in computer operating systems, the risk was that they could one day grow to challenge its dominance.

The Justice Department could make a similar argument about Google today, said William Kovacic, a law professor at George Washington University and a former FTC chairman.

"The arguments about demanding exclusivity as a way of excluding rivals are arguments that were very successful in the Microsoft case," he said.